

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

In re:  PAUL R. LANGENBACK,  Debtor(s).	Chapter 13 Case No. 22-10118-HZC
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**OBJECTION OF U.S. BANK TRUST TO  
CONFIRMATION OF CHAPTER 13 PLAN**

NOW COMES U.S. Bank Trust National Association, as Trustee of the Dwelling Series IV Trust as serviced by Rushmore Loan Management Services LLC, (“**U.S. Bank Trust**”) and objects to confirmation of the Chapter 13 plan of Paul R. Langenback (the “**Debtor**”). In support of its objection to confirmation, U.S. Bank Trust states as follows.

**STATEMENT OF MATERIAL FACTS**

1. On October 8, 1999, the Debtor executed a promissory note in favor of Ameriquest Mortgage Company for a loan in the amount of \$80,000.00 (the “**Note**”).
2. On October 8, 1999, as security for his obligations under the Note, the Debtor granted a mortgage (the “**Mortgage**”) on certain real property known as and numbered 306 Sparrow Drive, Readsboro, Vermont (the “**Property**”).
3. The Note and the Mortgage for the Property have been assigned to U.S. Bank Trust.

### **Bankruptcy Petition**

4. On August 18, 2022, the Debtor filed a voluntary Chapter 13 petition with this Court, commencing the above-captioned case. Doc. No. 1.

5. U.S. Bank Trust alleges that the Debtor owes pre-petition arrears under the Note and Mortgage totaling \$260,678.45. By filing this objection, U.S. Bank Trust hereby sets forth its demand for payment and intent to hold the Debtor liable for the debt.

6. The deadline for non-governmental proofs of claim is October 27, 2022.

7. On December September 12, 2022, the Debtor filed a Chapter 13 plan (the “**Plan**”). Doc. No. 17.

8. Pursuant to the Plan, the Debtor proposes to maintain post-petition payments via payments sent by the Chapter 13 Trustee. The Debtor does not include any pre-petition arrears in the Plan. Id.

9. The plan also provides for modifying the ongoing monthly mortgage payment, based on the current principal balance of the loan at 4% interest amortized over 360 months, with the remainder to be applied to taxes. The Debtor is proposing to maintain his own insurance. Id.

10. Finally, the plan provides for the sale of the property within 12 months of the adjudication of U.S. Bank Trust’s proof of claim.

### **GROUND FOR OBJECTION TO PLAN**

11. U.S. Bank Trust respectfully asks this Court to refuse to confirm the Plan for the following reasons.

12. U.S. Bank Trust objects to the proposed treatment as the Plan fails to provide for the pre-petition arrears owed to U.S. Bank Trust.

13. U.S. Bank Trust also objects to the modification of the post-petition monthly mortgage payment. The proposed “remaining balance” of the modified payment is insufficient to cover the post-petition real estate taxes. The proposed principal and interest payment is \$368.00 per month, leaving \$482.00 per month for taxes. On an annual basis, the amount devoted to taxes would be \$5,784.00. U.S. Bank Trust estimates that real estate taxes are \$9,113.35 on an annual basis. Additionally, the remaining payment is insufficient to cover the projected escrow shortfall of \$7,594.45.

14. U.S. Bank Trust also objects to the Debtor proposing to maintain his own insurance on the property. In order to protect its interest in the property, U.S. Bank Trust prefers to maintain the insurance.

15. U.S. Bank Trust objects to the proposed interest rate of 4%, as it is well below the prime interest rate. In Chapter 13 cases, the proper interest rate for modified claims is the prime interest rate as adjusted for the specific risk factors of the debtor. Till v. SCS Credit Corp., 541 U.S. 465 (2004). As of September 22, 2022, the current prime interest rate is 6.25%. This loan is significantly in default and is currently due for the November 1, 2005 payment. Accordingly, the debtor poses a significant risk of non-payment. While U.S. Bank Trust prefers the current contract interest rate of 12.5%, under the factors articulated in Till, U.S. Bank Trust states that any modified interest rate that may be imposed should not be lower than 9.25%.

16. U.S. Bank Trust reserves its right to object to the treatment as an impermissible modification under 11 U.S.C. § 1322(b)(2), should it be determined that the property remains the principal residence of the Debtor.

WHEREFORE, in light of the foregoing, U.S. Bank Trust respectfully requests that this Court enter an order:

- (a) Denying confirmation of the Debtor's Chapter 13 plan; and
- (b) Granting U.S. Bank Trust such other and further relief as is just and proper.

Respectfully submitted,

U.S. BANK TRUST NATIONAL  
ASSOCIATION, AS TRUSTEE OF THE  
DWELLING SERIES IV TRUST AS  
SERVICED BY RUSHMORE LOAN  
MANAGEMENT SERVICES LLC,

By its attorney,

/s/ Patrick J. Martin, Esq.

Patrick J. Martin (BBO#6396)

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DATE: September 23, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

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**CERTIFICATE OF SERVICE**

I, Patrick J. Martin, Esq. of the law firm of Demerle Hoeger LLP, hereby certify that I have this 23th day of September 2022 served on behalf of U.S. Bank Trust National Association, as Trustee of the Dwelling Series IV Trust as serviced by Rushmore Loan Management Services LLC, an Objection to Confirmation of Chapter 13 Plan and this Certificate of Service by causing copies hereof to be sent by electronic mail via the Case Management / Electronic Case Files (ECF) system and by private electronic mail to all parties not appearing electronically but entitled to service per the Federal Rules of Bankruptcy Procedure.

Paul R. Langenback 750 South State Rd. Cheshire, MA 01225 (M)	Rebecca A Rice Cohen & Rice 110 Merchants Row, 3rd Floor Rutland, VT 05701 (ECF)
Jan M. Sensenich P.O. Box 1326 Norwich, VT 05055 (ECF)	U S Trustee Office of the United States Trustee Leo O'Brien Federal Building 11A Clinton Ave., Room 620 Albany, NY 12207-2190 (ECF)

/s/ Patrick J. Martin, Esq.  
 Patrick J. Martin, Esq.